



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAR 26 2015**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

Sarah T. Sullivan  
Stinson Leonard  
1201 Walnut Street  
Kansas City, Missouri 64106

Dear Ms. Sullivan

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2015-0025 with The Hillshire Brands Company. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 24, 2015.

Pursuant to paragraph 34 of the CAFO, The Hillshire Brands Company must pay the civil penalty within 30 days of the date the CAFO was filed. Your electronic funds transfer must display the case name The Hillshire Brands Company and the docket number CAA-05-2015-0025.

Please direct any questions regarding this case to Susan Tennenbaum, Associate Regional Counsel, 312.886.0273.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah G. Marshall", is written above the typed name.

Sarah G. Marshall  
Chief  
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Susan Tennenbaum/C-14J  
Tom Hess, MDEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

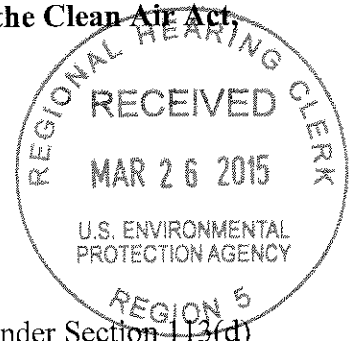
**In the Matter of:**

**The Hillshire Brands Company  
Traverse City, Michigan**

**Respondent.**

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) **Docket No. CAA-05-2015-0025**  
)  
) **Proceeding to Assess a Civil Penalty**  
) **Under Section 113(d) of the Clean Air Act,**  
) **42 U.S.C. § 7413(d)**  
)  
)



**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is The Hillshire Brands Company, a corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 110 of the CAA, each state must adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113.

10. On May 6, 1980, EPA approved Michigan Rule 336.1201 as part of the federally enforceable Michigan SIP. 45 Fed. Reg. 29790 (May 6, 1980).

11. R336.1201 of the Michigan SIP states, "a person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued by the commission. This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved."

12. On July 26, 1982, and June 11, 1992, EPA approved Michigan Rules 336.1101 and 336.1116, respectively, as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32117 and 57 Fed. Reg. 24752.

13. R336.1101 states that "air contaminant" means "a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof." 47 Fed. Reg. 32117 (July 26, 1982).

14. R336.1116 states that “person” means “any of the following: (i) An individual person..., (v) Association, (vi) Partnership, (vii) Firm..., (ix) Company, (x) Corporation, (xi) Business trust..., or (xxi) Other entity recognized by law as the subject of rights and duties.” among other things. 57 Fed. Reg. 24752 (June 11, 1992).

15. R336.1116 states that “process” or “process equipment” means “any equipment, device, or contrivance and all appurtenances thereto, for the changing any materials ... the use of which may cause discharge of an air contaminant into the outer air.” 47 Fed. Reg. 32117 (July 26, 1982).

16. Section 113(d)(1)(A) of the CAA authorizes the Administrator of EPA (the Administrator) to issue an order assessing a civil penalty whenever, among other things, the Administrator finds that any person has violated or is violating any requirement or prohibition of an applicable implementation plan.

17. The Administrator may assess a civil penalty of up to 37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### **Factual Allegations and Alleged Violations**

20. Respondent owns and operates a commercial bakery (facility) located in Traverse City, Michigan.

21. Respondent is a person as that term is defined in the Michigan SIP.

22. Respondent's facility contains process equipment as defined in the Michigan SIP.

23. The process equipment at the facility causes discharge of volatile organic compounds (VOC) into the outer air.

24. VOC is a gaseous emission to the air and is an air contaminant as defined in the Michigan SIP.

25. On November 7, 2013, EPA inspected the Hillshire facility in the company of staff from the Michigan Department of Environmental Quality (MDEQ) Cadillac District Office.

26. During the inspection, EPA confirmed with the facility and the MDEQ inspectors that the facility did not then have any type of air permit issued by MDEQ.

27. On December 5, 2013, EPA issued a Request for Information (information request) to Hillshire pursuant to Section 114 of the Act, requesting, among other things, calculations of annual actual emissions of VOC and annual potential to emit VOC from 2009 through issuance of the information request.

28. On February 27, 2014, Hillshire submitted its response to EPA, including a calculation of potential to emit VOC that exceeded 40 tons per year.

29. In early April 2014, EPA staff spoke by phone with MDEQ staff, who confirmed that MDEQ had not yet received any permit application from Hillshire.

30. On May 6, 2014, EPA issued a Notice and Finding of Violation (NOV/FOV) to Hillshire. In the NOV/FOV, EPA alleged, among other things, that Hillshire constructed and

installed an air contaminant source at its Traverse City, Michigan, location without first obtaining a permit to install, in violation of the Michigan SIP at Rule 336.1201.

31. On June 10, 2014, representatives of Hillshire and EPA discussed the May 6, 2014, NOV/FOV.

32. On October 22, 2014, EPA issued to Hillshire an Administrative Consent Order requiring Hillshire to submit to MDEQ complete and accurate potential to emit calculations of VOC and a complete air permit application.

33. On November 11<sup>th</sup> and December 15<sup>th</sup>, 2014, Hillshire submitted to MDEQ complete and accurate VOC calculations and an air permit application.

#### **Civil Penalty**

34. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$ 67,982. Within 30 days after the effective date of this CAFO, Respondent must pay a \$ 67,982 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," by U.S. Mail to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must note Respondent's name and docket number of this CAFO.

35. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Susan Tennenbaum, Associate Regional Counsel (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 34, above, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

40. On October 22, 2014, EPA issued an Administrative Order on Consent, requiring Hillshire to achieve compliance by submitting to MDEQ a complete and accurate permit application in accordance with the Michigan SIP at R.336.1203, and by sending EPA a copy of its submission. EPA finds that the Respondent has complied with the terms of this Administrative Consent Order.

41. Except as expressly provided in paragraphs 39 and 40, above, the CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

42. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 39 and 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

43. Respondent certifies that it is complying fully with the Michigan SIP.

44. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

45. The terms of this CAFO bind Respondent, its successors and assigns.



46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and attorney's fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

**The Hillshire Brands Company, Respondent**

3/5/2015  
Date

R. Reed Hulse  
VP and Secretary  
The Hillshire Brands Company

**United States Environmental Protection Agency, Complainant**

3/18/15  
Date


George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: The Hillshire Brands Company**  
**Docket No. CAA-05-2015-0025**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED:

3/23/2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: The Hillshire Brands Company  
Docket Number: CAA-05-2015-0025

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on March 26, 2015, this day in the following manner to the addressees:

Copy by Certified Mail  
Return-Receipt Requested:

Sarah T. Sullivan  
Stinson Leonard  
1201 Walnut Street  
Kansas City, Missouri 64106

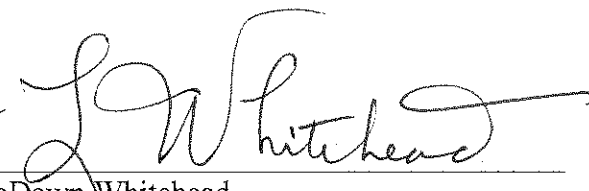
Copy by E-mail to  
Complainant:

Susan Tennenbaum  
Tennenbaum.susan@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

March 26, 2015 

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7339